

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

YNDALECIO GAONA, JR.,

Petitioner,

Case Number: 2:13-CV-13204

HONORABLE VICTORIA A. ROBERTS

v.

STEVE RIVARD,

Respondent.

ORDER GRANTING PETITIONER'S MOTION FOR RECONSIDERATION
(ECF NO. 10)1

Petitioner Yndalecio Gaona, Jr., is a state inmate at the Lakeland Correctional Facility in Coldwater, Michigan. He filed a *pro se* petition for a writ of habeas corpus challenging his convictions for assault with intent to commit murder and possession of a firearm during the commission of a felony.

The Court granted a stay in 2003 to allow Petitioner to exhaust state court remedies. (ECF No. 5). In October 2016, the Court granted Petitioner an enlargement of time to comply with the terms of the stay. (ECF No. 9). Now before the Court is Petitioner's Motion for Reconsideration of Order Granting Petitioner's Motion for Enlargement of Time to File Motion to Lift Stay. (ECF No. 10).

The Court's stay order required Petitioner to file a motion for relief from judgment with the state trial court within sixty days from the Court's order and to file a motion to lift the stay and an amended petition within sixty days after the conclusion of the state

court proceedings. In his motion for an enlargement of time, Petitioner states that, after the trial court denied his motion for relief from judgment, he mailed an application for leave to appeal to the Michigan Court of Appeals, but learned two years later that the application was never received by the court of appeals. *See* Petitioner's Motion for Enlargement of Time at 6, ECF No. 8, Pg. ID 77. Petitioner sought a continuation of the stay while he asked the trial court to reissue its order denying his motion for relief from judgment so that the time for filing an application for leave to appeal in the Michigan Court of Appeals would begin anew. The Court granted the motion for the limited purpose of allowing Petitioner to file, within sixty days, a motion asking the trial court to reissue its order denying his motion for relief from judgment. The Court ordered that, if the trial court denied the motion, Petitioner had sixty days from that date to move to reopen this proceeding. The trial court denied Petitioner's motion to reissue its order. Petitioner now asks the Court to allow him additional time to seek relief from the Michigan Court of Appeals and Michigan Supreme Court, instead of immediately seeking leave to reopen the habeas proceeding. It is unclear whether the trial court's decision is appealable under state law, but the Court will not decide that issue of state law. The Court will allow Petitioner time to seek leave to appeal in the Michigan Court of Appeals and Michigan Supreme Court.

The Court GRANTS Petitioner's Motion for Reconsideration (ECF No. 10), and allows Petitioner SIXTY DAYS from the conclusion of state court review to file a motion to lift the stay and an amended petition. This case remains closed for administrative

purposes.

S/Victoria A. Roberts
VICTORIA A. ROBERTS
UNITED STATES DISTRICT JUDGE

Dated: August 9, 2017